

Change to CGT implications for foreign residents – now law

Foreign tax residents impacted by new changes to the main resident capital gains tax exemption are encouraged to review the impact immediately and formulate a tax strategy.

Despite best efforts of professionals and expat groups, the reintroduced Bill to deny the main residence capital gains tax (CGT) exemption where the owner is a foreign tax resident at the sale date has now become law. This will affect Australian citizens, permanent residents and New Zealand citizens who are not residents of Australia for tax purposes.

When do changes take effect?

The new law will apply immediately to properties acquired after 9 May 2017. Homes owned prior to this date are affected only if sold after 30 June 2020, which is a 12 month extension from the original 2017 Budget announcement. This gives foreign tax residents a small grace period to take advantage of the main residence exemption.

The date of disposal will generally be the date that the contract for sale is entered into. If the seller is a foreign resident for Australian tax purposes on this date they will not be eligible for the exemption.

The new legislation will not allow for the apportionment of the main residence exemption for the days that the dwelling was owned as an Australian tax resident. It is essentially all or nothing depending on tax residence status at the time of the CGT event.



Life event exclusions

An exception to the denial of the main residence CGT exemption is in the case of certain life events that occur within six years of the foreign resident losing their Australian tax residency.

The certain life events test (during the period of foreign tax residency) is narrowly defined as:

- Death of a spouse or child
- Terminal medical condition of taxpayer, spouse or child
- Divorce or Separation



Does the 'absence rule' still apply?

Individuals can still rely on the main residence 'absence rule' allowing them to continue treating a dwelling as their main residence while they are foreign tax residents, to the extent that they are once again tax residents of Australia when they sell the property.

The 'absence rule' cannot be relied upon by foreign tax residents who meet the conditions if they sell their property before they become an Australian tax resident again.

What next?

Individuals who are foreign tax residents or expecting to become foreign tax residents should:

- Be aware of the Australian tax implications and the 30 June 2020 deadline to apply the transitional rules and how this impacts you (properties acquired before May 9 2017)
- Consider Australian tax residency status and the impact on the new legislation
- Formulate a tax strategy on any proposed or upcoming property acquisition or sale.



Employers who send expatriates overseas on assignment should also consider the impact:

- Equalised expatriates may create additional tax liability for employers where not eligible for the CGT exemption on the sale of the main residence.
- Employees may want to try to maintain their Australian tax residency status which may incur additional costs or compliance obligations for their employer.



How can we help?

For more information about how these changes may affect you or your business, please contact Sam Morris, Justin Batticciotto or your ShineWing Australia representative.



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